No. 80-809

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

LITTON SYSTEMS, INC.,
Petitioner,

v.

ALVIN L. LUNDY,
Respondent.

BRIEF OF AMICUS CURIAE SHIPBUILDERS COUNCIL OF AMERICA IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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January 19, 1981

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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I. INTRODUCTION

Pursuant to Supreme Court Rule 36, the Shipbuilders Council of America, having obtained the written consent of all parties,[1] submits this Brief as Amicus Curiae, in support of the Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit. The Petition asks this Court to review a decision of the Fifth Circuit which could subject the United States shipbuilding industry to a flood of third party negligence suits and render the exclusive remedy provision of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 901 (1976) (hereinafter referred to as the "Longshoremen's Act"), meaningless.

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[1] *See* Appendix.

II. SUMMARY OF THE ARGUMENT

The Fifth Circuit decision held that an injured shipyard employee can maintain a negligence action against his employer as owner of an incomplete U.S. Navy vessel upon which the worker was injured. The Shipbuilders Council submits that this decision is in conflict with the Longshoremen's Act, which provides that an injured worker's exclusive remedy against his employer is workers' compensation under the Act. While the Act in section 5(b) does provide for third party negligence suits against completed vessels in navigation, Congress never intended that the term "vessel" be interpreted to include incomplete vessels. Such an interpretation would result in shipyard workers being able to sue their employers for negligence for any injury during the various stages of the shipbuilding process. The ensuing litigation would render meaningless the worker's compensation scheme of the Act for the entire shipbuilding industry.

This Court has considered delineation of the scope of the compensation remedy of the 1972 Amendments important enough to merit two decisions in recent years: *P. C. Pfeiffer Co., Inc.* v. *Ford*, 444 U.S. 69 (1979); *Northeast Marine Terminal Co., Inc.* v. *Caputo*, 432 U.S. 249 (1977). This Court defined the term "longshoremen" early in the life of the 1972 Amendments so that all parties were apprised of their respective rights and liabilities under the compensation provisions of the Act. Similarly, it is of equal importance for this Court to provide guidance regarding the definition of the term "vessel" for purposes of third party negligence suits so as to provide an early and definitive statement regarding the rights and obligations of "third parties" in this exclusively federal area of litigation.

III. STATEMENT OF INTEREST OF AMICUS CURIAE

This Amicus Curiae Brief is filed on behalf of the Shipbuilders Council of America. The Shipbuilders Council is the national industry association representing major shipbuilders, ship repairers and ship component manufacturers throughout the United States. The Council's members are responsible for the construction of virtually all large United States military vessels and for a vast majority of the private ship construction of oceangoing vessels in the United States.

Because its members are located throughout the United States, and because individual members have shipyards in more than one judicial circuit, the Council is particularly concerned that the courts uniformly interpret the responsibilities of shipbuilders. The Fifth Circuit decision, which this Court is being asked to review, threatens the financial stability of the shipbuilding industry and conflicts with prior court decisions as to the interpretation of the Longshoremen's Act and maritime jurisdiction. The Council respectfully asks this Court to accept Litton System Inc.'s Petition for Writ of Certiorari and resolve this important issue.

IV. REASONS FOR GRANTING THE WRIT

A. The Fifth Circuit's Decision Undermines The Statutory Framework Of The Longshoremen's Act By Defeating The Exclusive Remedy Provision With Respect To Shipbuilders

The decision of the United States Court of Appeals for the Fifth Circuit eviscerates the exclusive remedy provision of the Longshoremen's Act for the shipbuilding industry. One of the fundamental features of the Longshoremen's Act, like all workers' compensation statutes, is that the worker is provided statutory compensation, without regard to fault, but that such compensation is the exclusive remedy of the worker against his employer. Section 5(a) of the Longshoremen's Act is

very specific in providing that the statutory compensation under the Act is "exclusive and in place of all other liability of such employer to his employee . . . ." 33 U.S.C. § 905(a) (1976).

The Longshoremen's Act, in section 5(b), in conjunction with section 33, provides that injured employees may bring third party negligence suits against vessels if the negligence of the vessel caused the worker's injury.[2] Congress also provided that where the vessel supplies its own stevedoring, shipbuilding or ship repair services, and thus the vessel and the employer are one and the same, the worker can sue the vessel/employer in a third party negligence suit, but only for "vessel" negligence as opposed to stevedoring, shipbuilding or ship repair negligence.[3]

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[2] Section 5(b) of the Act provides as follows:

> In the event of injury to a person covered under this Act caused by the *negligence of a vessel*, then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such vessel as a third party in accordance with the provisions of section 33 of this Act, and the employer shall not be liable to the vessel for such damages directly or indirectly and any agreements or warranties to the contrary shall be void. If such person was employed by the vessel to provide stevedoring services, no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing stevedoring services to the vessel. If such person was employed by the vessel to provide shipbuilding or repair services, *no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing shipbuilding or repair services to the vessel. The liability of the vessel under this subsection shall not be based upon the warranty of seaworthiness or a breach thereof at the time the injury occurred.* The remedy provided in this subsection shall be exclusive of all other remedies against the vessel except remedies available under this Act.

33 U.S.C. § 905(b) (1976) (emphasis added).

[3] See the second and third sentence of section 5(b) of the Act. 33 U.S.C. § 905(b) (1976). This exception allowing a negligence suit against a vessel/employer was based on the decision of *Reed*

The broad issue thus raised by this appeal is whether section 5(b) is applicable to a vessel under construction. More specifically, the question which must be decided is whether an incomplete vessel falls within the definition of a "vessel" under section 5(b). This, of course, would determine the application of the term "vessel" to the shipbuilding industry. The legislative history and relevant case law indicate that the term "vessel" refers to a completed ship in navigation, and not an incomplete ship or portions of a ship under construction. The resolution of this issue by this Court is of paramount importance to the shipbuilding industry, because the decision of the Fifth Circuit totally undermines the exclusive remedy provision of the Act for the industry.

The Longshoremen's Act definition of a "vessel" provided in section 2(21) does not resolve the question in that it uses the word "vessel" in defining the term "vessel."[4] Thus, we must go beyond the face of the

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v. *The Yaka*, 373 U.S. 410 (1963), in which the Supreme Court held that since an employee can normally sue the vessel under the warranty of seaworthiness of the vessel, such a suit should be permitted even where the vessel is also the employer. *See S. Rep. No.* 92-1125 at 11-12 (1972).

This Court in *Reed* and related cases did not consider the question of whether general maritime negligence suits fall within the *Reed* doctrine. Those courts which have considered this issue have held that such suits are not encompassed by *Reed*. *See* part IV. B., *infra* at 10-13. Thus, an employer/vessel owner could not have been sued for general maritime negligence. While Congress in section 5(b) changed the standard of liability for third party suits from seaworthiness to negligence, it clearly did not mean to change the scope of such suits to encompass all of general maritime jurisdiction. Rather, Congress was relying on the prior case law under *Reed* and elsewhere which limited such third party suits to completed vessels. *See* part IV. A., *infra* at 7-9 and part IV. B., *infra* at 9-13 for a discussion of the legislative history and pre-1972 case law.

[4] Section 2(21) provides as follows:

> The term "vessel" means any vessel upon which or in connection with which any person entitled to benefits under this

statute to interpret the term and hence the scope of third party negligence suits under section 5(b).

The Court of Appeals in *Lundy* held that injuries sustained aboard the incomplete U.S. Navy ship in question were within the jurisdiction of the Longshoremen's Act. The court then apparently reasoned that since the incomplete ship was within the scope of the Act for workers' compensation purposes, it must *a fortiori* be a "vessel" within the meaning of section 5(b) of the Act. While the court alluded to the fact that the ship was 97% completed, its citation to, and sole reliance on, the decision of *Ingalls Shipbuilding Corp., Division of Litton Systems, Inc.* v. *Morgan*, 551 F.2d 61 (5th Cir.), *cert. denied*, 434 U.S. 966 (1977) indicates that the court would find even the simplest shipbuilding component structures to be "vessels" for third party negligence suit purposes. The Fifth Circuit in *Morgan* held that employees working on such structures, at whatever stage of completion, fall with the scope of the Longshoremen's Act generally.[5]

In contrast to the Fifth Circuit's *Lundy* decision, the legislative history of the 1972 Amendments reveals that Congress intended that third party negligence suits under section 5(b) would only be applicable to completed

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Act suffers injury or death arising out of or in the course of his employment, and said vessel's owner, owner pro hac vice, agent, operator, charter or bare boat charterer, master, officer or crew member.

33 U.S.C. § 902(21) (1976).

[5] The Fifth Circuit, in *Ingalls Shipbuilding Corp., Division of Litton Systems, Inc.* v. *Morgan*, 551 F.2d 61 (5th Cir.), *cert. denied*, 434 U.S. 966 (1977), held that the general compensation provisions of the Act encompass injuries sustained while working on incomplete ships (Morgan's death occurred in a shop). This hardly decides the issue of the definition of the term "vessel" under section 5(b) and thus whether third party negligence suits apply to incomplete vessels.

vessels. Congress relied on prior case law which limited the definition of vessels to completed ships. Indeed, Congress, in enacting section 5(b), thought it was reducing litigation over third party claims. Certainly Congress did not think it was allowing any new type of third party litigation or changing the compensation scheme of the Longshoremen's Act. In particular, there is absolutely no evidence that Congress wished to change drastically the structure of the Act and include the entire shipbuilding industry under the scope of section 5(b) third party negligence suits. Yet, this is the precise result of the *Lundy* decision, taken to its logical conclusion.

Congress, by adding section 5(b) to the Act, through the 1972 Amendments, intended to accomplish two straightforward results. First, Congress sought to limit the liabiltiy of vessels by eliminating the no-fault warranty of seaworthiness as to injured maritime employees covered under the Longshoremen's Act and restricting their cause of action to one based on negligence. Second, Congress sought to provide explicitly that a vessel owner could not attempt to pass on his liability to a worker's employer by seeking indemnity from him. Congress did not attempt to otherwise change the nature of third party actions. That is, while Congress changed the *standard of liability* to be utilized in such third party suits (from strict liability to negligence), Congress clearly did not intend to expand the *scope* of these suits and indeed the legislative history clearly demonstrates an intent to reduce the amount of third party litigation. *See S. Rep. No.* 92-1125 at 2, 4, 5, 9, 10-11, 25 (1972).[6]

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[6] The Senate Report provides, in part, as follows:

> The bill reported by the committee meets these objections by specifically eliminating suits against vessels brought for injuries to longshoremen under the doctrine of seaworthiness and outlawing indemnification actions and "hold harmless" or

The Senate Report indicates, for example, that it was the Congressional concern with the cost of these third party suits that prompted it to attempt to reduce the number of such actions:

> The Committee heard testimony that the number of third-party actions brought under the *Sieracki* and *Ryan* line of decisions has increased substantially in recent years and that much of the financial resources which could better be utilized to pay improved compensation benefits were now being spent to defray litigation costs.

Id. at 9. It would be strange indeed, if Congress, while being concerned with the cost of litigation, greatly expanded the scope of litigation without even mentioning in its report that it was doing so. If third party suits are allowed against incomplete vessels, as the Fifth Circuit held, then the extent of third party litigation will be significantly expanded and, indeed, the entire shipbuilding process would be subject to third party suits. Virtually every shipyard worker who is injured during the years of construction of a ship could conceivably sue his employer/owner of the vessel for negligence.

This Court, in *Bloomer* v. *Liberty Mutual Insurance Co.*, 100 S. Ct. 925 (1980), recently noted that Congress was attempting, in the 1972 Amendments, to reduce, not create litigation and thus one cannot assume that new liability was created *sub silentio*:

> It would be ironic indeed if statutory amendments designed to eliminate the stevedore's liability in con-

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indemnity agreements. It *continues* to allow suits against vessels or other third parties for negligence.

Id. at 5 (emphasis added). *See also S. Rep. No.* 92-1125 at 11-12 (1972), wherein the Senate Report discusses the *Reed* doctrine. Obviously the Senate would not have used the term "continues" if Congress intended to enlarge or change the permissible scope of third party litigation.

> nection with third-party actions were interpreted to give birth to an entirely new liability in the form of a charge for the longshoreman's legal expenses. We are unwilling to attribute to Congress an intention to allow creation of a new liability irreconcilable with its general desire to reduce litigation and to ensure conservation of the legal expenses of stevedores and their insurers.

Id. at 932. We would respectfully submit that the reasoning in *Bloomer* is equally applicable to the Fifth Circuit's attempt to expand greatly third party litigation.

B. The Fifth Circuit's Decision To Include Incomplete Vessels Within The Scope Of Third Party Actions Conflicts With The Pre-1972 Case Law Upon Which Congress Relied In Enacting Section 5(b)

The employee in the *Lundy* decision was a meter calibrator who was working on the construction and preparation of the ship for sea trials. The ship was neither completed nor commissioned and, thus, was not a "vessel in navigation." The Fifth Circuit determined that the incomplete ship was a "vessel" under section 5(b) of the Act, that the employer was the owner of the vessel since it had not yet been turned over to the Navy, and that under section 5(b) of the Act, the employer/owner of the vessel could be sued for negligence.[7] While the

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[7] The Fifth Circuit appears to assume in this case that section 5(b) of the Longshoremen's Act is an independent grant of jurisdiction for the federal courts. The Shipbuilders Council contends that neither the language of the Act nor the legislative history of the 1972 Amendments evidence any intention on the part of Congress to create a new jurisdiction in the federal courts under the law of admiralty. *See Califano* v. *Sanders*, 430 U.S. 99 (1977). Courts have recognized that Congress intended to create federal court jurisdiction by means of section 21 of the Longshoremen's Act, 33 U.S.C. § 921 (1976); *See Smith* v. *Guerrant*, 290 F.Supp. 111, 113 n.13. (S.D. Tex. 1968). However, in that situation, the granting of federal jurisdiction was unambiguous, both in the statutory language and the legislative history.

Lundy case represents the first time that a circuit court has allowed a negligence suit by an employee against his employer/shipbuilder, the Ninth Circuit, as well as a district court in the Third Circuit, in cases involving injuries which occurred before the 1972 Amendments, considered such suits and rejected them. Since the legislative history reveals that Congress in enacting the 1972 Amendments did not change the scope of third party actions, there is a conflict among the circuits which this Court should resolve.

In *Arvidson* v. *Dillingham Corp.*, 462 F.2d 1 (9th Cir.), *cert. denied*, 409 U.S. 983 (1972), a worker who was injured on a barge which was under construction, sued his employer/owner of the barge for negligence and a breach of the warranty of seaworthiness. The Ninth Circuit affirmed a summary judgment for the shipyard. The court determined that the *Reed* doctrine, which permits unseaworthiness suits against employers/vessel owners, only allows such litigation where there is a completed vessel and the hazards of the sea exist. *Id.* at 2-4.

Similarly, in *Haas* v. *653 Leasing Co.*, 425 F. Supp. 1305 (E.D. Pa. 1977), the United States District Court for the Eastern District of Pennsylvania held that a nearly completed ship is not a vessel in navigation, and an injured worker could not recover under the warranty of seaworthiness from his employer/vessel owner. As in the instant case, the vessel in *Haas* was a launched but uncommissioned vessel which had been returned to the shipyard for further work after sea trials. The court in *Haas* relied on the traditional admiralty definition of a vessel which is a ship "engaged as an instrument of commerce or transportation." *Id.* at 1309. Like the *Arvidson* court, the district court did not interpret *Reed* as applying to incomplete vessels. *Id.* at 1309-13.

The circuit courts are thus in conflict over the issue of whether an incomplete ship is a vessel such that an injured worker can sue the shipyard/owner of the vessel outside of the compensation provisions of the Longshoremen's Act.[8] Moreover, the *Lundy* decision conflicts with pre-1972 case law which uniformly defined a vessel as a completed ship in navigation. The Fourth Circuit, for example, in *Frankel* v. *Bethlehem-Fairfield Shipyard, Inc.*, 132 F.2d 634 (4th Cir. 1942), held that a launched but not fully completed or commissioned ship was not a vessel under admiralty doctrine in that it had not "take[n] her place in commerce and navigation." *Id.* at 635. Similarly, this Court has recognized that a vessel is defined to include only vessels in navigation, *Roper* v. *United States*, 368 U.S. 20 (1961).

This Court, in interpreting the Longshoremen's Act, recently noted in *Edmonds* v. *Compagnie Generale Transatllantique*, 443 U.S. 256, 273 (1980), that the courts should not change admiralty doctrines once Congress has relied on them:

> Once Congress has relied upon conditions that the courts have created, we are not as free as we would otherwise be to change them. A change in the condi-

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[8] As previously noted, the *Arvidson* and *Haas* courts were dealing with pre-1972 Amendment injuries. However, as discussed in part IV. A, *supra* at 7-9, the 1972 Amendments did not change the scope or jurisdiction of third party suits under the Longshoremen's Act and thus *Arvidson* and *Haas* would apply to post-1972 Amendment cases.

Moreover, there appears to be a conflict even within the Fifth Court itself. In *Hollister* v. *Luke Construction Co.*, 517 F.2d 920 (5th Cir. 1975), the Fifth Circuit held that a worker, who was injured while working on an incomplete barge, could not sue his employer for negligence or breach of the warranty of seaworthiness because an incomplete vessel is not a vessel in navigation. This is a post-1972 Amendment case and clearly conflicts with the Fifth Circuit's own decision in *Lundy*.

> tions would effectively alter the statute by causing it to reach different results than Congress envisioned.

Id. at 73. The Fifth Circuit's decision totally ignores this principle in that it defines "vessel" for third party liability purposes to include incomplete ships in contradiction to the well established admiralty doctrine that vessels are defined to include only vessels in navigation.

Interestingly, the Fifth Circuit, before the instant case, had long adhered to the doctrine that an incomplete vessel is not a vessel in navigation and thus the admiralty warranty of seaworthiness does not apply. This is especially important since, as noted in part IV. A., *supra*, the legislatively created third party negligence provision in section 5(b) of the Act derives from the warranty of seaworthiness doctrine, as that doctrine had been applied in *Reed*.

In *Alfred* v. *M/V Margaret Lykes*, 398 F.2d 684 (5th Cir. 1968), the Fifth Circuit determined that a ship which had been launched but not fully completed or commissioned was not a "vessel in service in navigation" and hence the warranty of seaworthiness was inapplicable. *Id.* at 686. The Court thus would not allow the injured worker to maintain an action against his employer. Again, in *Atkins* v. *Greenville Shipbuilding Corp.*, 411 F.2d 279 (5th Cir.), *cert. denied*, 396 U.S. 846 (1969), the Fifth Circuit held that for purposes of applying the maritime warranty of seaworthiness, a vessel is defined to include only ships in navigation and did not include a drydock. *Id.* at 282. The Court held that the injured worker could not sue his employer even though the employer also owned the alleged vessel. The court explicitly held that the *Reed* doctrine did not apply to incomplete vessels:

> While the *Sieracki*, *Reed* and *Jackson* decisions in one sense expanded the scope of the warranty, im-

> plicit within their rationale is the limiting factor of tradition. The limitation requires that the injured shore-based worker be engaged in work traditionally that of a seaman. . . . By the same token, the craft or structure said to owe a warranty of seaworthiness must fall within the traditional category of "vessels.". . . . Mere flotation on water does not constitute a structure a "vessel" for purposes of salvage nor warranty of seaworthiness. The element of risk and exposure to the hazards of the sea, necessary for the operation of and common to both principles, is absent upon floating drydocks.

Id. at 282-83.

The case law before the 1972 Amendments clearly held that a vessel was defined to include only a ship in navigation. Moreover, the warranty of seaworthiness only applied to such vessels in navigation. Thus, employers/owners of vessels could only be sued by injured workmen, outside of the Longshoremen's Act, for injuries on completed vessels in navigation. As noted above, Congress relied on this case law in enacting section 5(b) of the Act. The Fifth Circuit decision nct only ignored this reliance, but also, as noted below, attempts an impossible interpretation of section 5(b).

C. Section 5(b) Cannot Encompass Incomplete Vessels In That There Is No Rational Method For Distinguishing Shipbuilding Negligence From Vessel Negligence Until The Ship Is Completed

Section 5(b) of the Act is designed, in part, to deal with the situation where the owner of the vessel is also the employer of the stevedore or repairman. Since the worker normally cannot sue his employer but can sue the vessel for negligence, Congress struck the balance that the worker can sue his employer, who is also the vessel

owner, but only for "vessel" negligence.[9] We have already noted that the prior case law and legislative history demonstrate that the term vessel refers to a completed vessel. Moreover, and of great significance, the distinction between "vessel" negligence and "stevedore or shipyard worker" negligence can only be logically applied to completed vessels. Since section 5(b) requires that such a distinction be made, the conclusion is clear that section 5(b) was intended to apply only to completed vessels.

Indeed, section 5(b) assumes that two separate areas of responsibility exist—the stevedoring (or shipbuilding) operation and the vessel. While these two areas may be under the control of the same person (if the vessel employs the stevedores or shipbuilders), only the vessel area of responsibility is subject to negligence suits. The stevedoring or shipbuilding area of responsibility is encompassed only by the compensation provisions of the Act. Congress created this difference in liability because of the special hazards inherent in work on a vessel which is strange to the worker.[10] In order to encourage vessels to take precautions to reduce the risks from these special hazards, Congress provided for the continued liability outside of workmen's compensation. *S. Rep. No.* 92-1125 at 5-6, 10. The *Lundy* decision makes the assumption that the vessel area of responsibility exists, and thus negligence suits should be permitted, when in fact there

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[9] *See* note 2 *supra*. While Congress used the term "shipbuilding or repair services," it clearly was referring to work on completed vessels which returned to a shipyard for repairs or shipbuilding additions. Most such ships, even when under repair, are still vessels in navigation since they still have some risks from having been in navigation, *e.g.*, the remains of past cargos. Thus, section 5(b) can be and is properly applied to them.

[10] Indeed, the vast majority of third party actions arise when a longshoreman is injured by an alleged defect in maintenance or cargo storage on a ship already in commerce.

is no such area of responsibility until the ship is completed and its crew takes command of the commissioned vessel. Before the ship is commissioned, the only area of responsibility is the shipbuilding process.

After a vessel is commissioned and in navigation, the vessel's area of responsibility and the negligence which can be caused by the vessel can be ascertained. Thus, if a boom is improperly maintained or oil is left on the deck, causing a hazard to longshoremen or shipyard workers, it may be attributed to "vessel" negligence. Similarly, any negligence with respect to the storage or type of cargo may be found to be vessel negligence. Such acts or omissions can be separated from "stevedore or repairman" negligence which would occur when a fellow worker or the employer failed to exercise proper care in the stevedoring operation or the repair work.

Before a ship is completed and in navigation, however, one cannot logically separate vessel negligence from shipbuilding negligence. The "vessel" *is* the very construction process and the building of the ship. Indeed, any negligence occurring prior to vessel completion must be shipbuilding negligence outside the scope of the cause of action contemplated by section 5(b).

V. CONCLUSION

The Petition For Writ of Certiorari should be granted. There is a conflict in the circuit courts over the question of whether an incomplete ship is a vessel under section 5(b) of the Act. The prior case law upon which Congress relied, as well as the legislative history, reveal that only completed vessels in navigation fall within the scope of section 5(b). The Fifth Circuit's refusal to recognize these facts has resulted in a decision which has

the potential for engulfing this Nation's shipbuilding industry in a flood of third party negligence litigation which would render the Longshoremen's Act meaningless for that industry. This Court should prevent this result and properly and consistently define maritime jurisdiction under section 5(b) of the Longshoremen's Act.

Respectfully submitted,

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January 19, 1981

APPENDIX

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

No. ———

LITTON SYSTEMS, INC.,
Petitioner

vs.

ALVIN L. LUNDY,
Respondent

CONSENT OF RESPONDENT TO THE FILING OF AMICUS CURIAE BRIEF

Now comes Alvin L. Lundy, Respondent in the above styled cause, by and through his counsel, and by these premises consents to the filing of an amicus curiae brief by the Shipbuilders Council of America.

This 10th day of December, 1980.

/s/ Bobby O'Barr
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December 16, 1980

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Re: *Litton Systems, Inc.*
vs. *Alvin L. Lundy*

Dear Steve:

During our recent conversations, we have discussed the filing of an amicus brief by the Shipbuilders Council of America.

We hereby consent to the filing of the brief by the Shipbuilders Council of America, as amicus curiae, in support of the Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit, Cause No. 80-809 in the Supreme Court of the United States.

Very truly yours,

INGALLS SHIPBUILDING DIVISION
LITTON SYSTEMS, INC.

/s/ John H. Carlson
JOHN H. CARLSON
Senior Staff Attorney

JHC:res

cc: J. Crowley, Esq.
K. Wiesenburg, Esq.
R. Ackerly, Esq.
Walter Meigs, Esq.
Bobby G. O'Barr, Esq.

CERTIFICATE OF SERVICE

I, Lawrence P. Postol, hereby certify that on this 19th day of January, 1981 three copies of the Brief of Amicus Curiae was mailed, first-class, postage prepaid, to each of the following:

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I further certify that all parties required to be served have been served.

LAWRENCE P. POSTOL
SEYFARTH, SHAW, FAIRWEATHER
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